IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 784 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THE STATE OF GUJARAT - Appellant
Versus
THAKOREBHAI MOTIBHAI THAKORE - Respondent

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Appearance :
MR KC SHAH, APP for Appellant
MR JITENDRA MALKAN with MS ALPA J DAVE for Respondent

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

and

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 25/09/2007

ORAL JUDGMENT (Per : HONOURABLE MR.JUSTICE J.R.VORA)

1. Leave to appeal granted. Appeal is admitted. Learned advocate Mr.Jitendra Malkan waives for the

respondent. Both the learned advocates for the appellant and respondent requested this Court to hear the Appeal finally as the Record and Proceedings of the trial Court is available with the Court and they would assist the Court with extra copies of the evidence and documents produced during the trial. The request is granted and this Appeal is heard finally.

2. Instant Appeal is preferred by the State under Section 378 of the Code of Criminal Procedure against the judgment and order delivered by the Additional Sessions Judge and Special Judge, Fast Track Court, Vadodara, on 5th May, 2004, in Atrocity Case No.27 of 2001, whereby, present respondent, being accused of said Atrocity Case, came to be acquitted by the trial Court for the charges levelled against him under Section 302 of the Indian Penal Code, under Section 135 of the Bombay Police Act and under Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3. Prosecution case, as has been disclosed, can briefly be

stated that the incident occurred on 11th March, 2001, near the hut of Ujiben (PW 7), behind Vishwamitri Township at Vadodara. In the incident, deceased Ramanbhai Melabhai Solanki, brother of complainant, Dineshbhai Melabhai Solanki, received injuries and died. PW 7, Ujiben, resided in her hut behind Vishwamitri Township, along with her husband Bhavsing Nayka. Ganpatbhai Chaganbhai Thakor, PW 3, Ramesh alias Abho Motibhai Mali, PW 4, Bodiyo Kallubhai Vadi, PW 5, deceased Ramanbhai, and accused, Thakorbhai Motibhai Thakor, were known to Ujiben, PW 7, as all of them frequently were visiting near her hut for collecting grass. On the day of incident, at about 11:00 am, Ujiben had been to fetch drinking water from the township and had returned to her hut. She found that Ganpatbhai Chaganbhai Thakor, Ramesh alias Abho Motibhai Mali, Bodiyo Kallubhai Vadi, and deceased Ramanbhai had stolen liquor from somewhere and after taking one bucket from her hut, were drinking liquor from the said bucket. Her husband also was taking liquor along with those persons. After some time, deceased Ramanbhai

sat near one Mango tree while Ganpatbhai Chaganbhai Thakor, Ramesh alias Abho Motibhai Mali and Bodiyo Kallubhai Vadi went away. Ujiben thereafter went behind her hut to collect grass for her cattle at about 12:00 noon and she noticed that the accused approached the place on scooter and he had a pipe in his hand. He called deceased Ramanbhai, who was sitting under a Mango tree and asked him that why he had stolen liquor. Thereafter, Thakorbhai, who is accused in the case, inflicted two to three blows by pipe on Ramanbhai and Ramanbhai had lied down on the ground under the Mango tree. At about 2:00 pm, Dineshbhai, brother of deceased Ramanbhai came in search of Ramanbhai and found him dead. According to Dineshbhai, deceased Ramanbhai was doing labour work and on the day of incident, along with Ganpatbhai Chaganbhai Thakor, Ramesh alias Abho Motibhai Mali and Bodiyo Kallubhai Vadi, the deceased had gone to collect grass but had not returned upto 2:00 pm, and therefore, he went in search and found Ramesh alias Abho near the house of one Champaben and inquired about Ramanbhai.

Ramesh alias Abho conveyed to Dineshbhai that Ramanbhai was lying near the hut of Ujiben and therefore, Dineshbhai went at the scene of offence and found that Ramanbhai was dead and his pant was blood stained. He had injuries on his legs, back and on private parts. Ujiben conveyed to Dineshbhai that Ramanbhai was beaten by Thakorbhai at about 11:00 am. Dineshbhai therefore gave the complaint which was recorded as Makarpura Police Station Crime Register No.I-78/2001 for the above said charges against the accused. The FIR was recorded by Vikramsinh Dipsinh Rathod, PW 16, and at initial stage, he investigated the offence and thereafter, Shaileshbhai Mangalbhai Katara, PW 17, took charge of investigation and filed the chargesheet against the present respondent.

4. The said chargesheet was registered as Criminal Case in the Court of JMFC at Vadodara and was committed to the Special Court and was registered as Atrocity Case No.27 of 2001. The said Atrocity Case was made over to the Special Judge, who framed Charge against the accused vide Ex.14 on 1st January, 2003 and the

same was read over to the accused. The accused pleaded “not guilty” to the Charge and therefore, the accused was put to trial.

5. The prosecution examined as many as seventeen witnesses and produced on record voluminous documentary evidence. After the evidence of prosecution was over, statement of the accused was recorded by the trial Court under Section 313 of the Code of Criminal Procedure after bringing to the notice of the accused incriminating circumstances against him. The defence of the accused was of total denial. After hearing the prosecution as well as defence, the learned trial Judge came to the above conclusion to acquit the accused of all the charges and hence this Appeal.

6. Learned APP Mr.K.C.Shah for the State and learned advocate Mr.Jitendra Malkan for the respondent were heard in detail.

7. We have appreciated the evidence and gone through the reasons assigned by the trial Court for the

acquittal carefully. We have considered the vital features of the case and reasonable probabilities arising out of the circumstances of the matter. We have taken into consideration the contentions raised by the learned advocates for the appellant and respondent. We have scanned carefully and thoroughly the record and proceedings of the trial Court.

8. Going through the prosecution case, it clearly appears that the prosecution failed to establish the charges against the respondent beyond reasonable doubt. Most of the witnesses are not the witnesses of the incident and only witness, i.e. PW 7, Ujiben Bhavsing Nayka, who, according to the prosecution case, was an eye-witness, did not support the prosecution. PW1, Dinesh Melabhai Solanki, examined at Ex.31, is formal complainant and he found dead body of his brother Ramanbhai Melabhai near the hut of Ujiben and gave the complaint. Except that, his evidence is not useful to the prosecution. The complaint is produced at Ex.33. Homicidal death of the deceased Ramanbhai is not disputed by the defence. At Ex.34, a certificate is

produced of the Social Welfare Officer to the effect that the deceased belonged to Scheduled Caste.

PW 2, Ganpatsinh Ambalal Jadav, is the Panch witness of Panchnama Ex.38 by which it is alleged that the accused gave information that he was willing to present a pipe used in the crime. A preliminary Panchnama was drawn and according to the prosecution case, the respondent accused led Police and Panchas to one building from where he recovered a pipe which was attached by the Police. PW 2 did not support the prosecution case in any manner.

PW 3, Ganpatbhai Chaganbhai Thakor, examined at Ex.38, PW 4, Rameshbhai alias Abho Motibhai Mali, examined at Ex.40 and PW 5, Bodiyo Kallubhai Vadi, examined at Ex.41, are the witnesses who had been to collect grass along with the deceased near the hut of Ujiben. According to evidence of these witnesses, all the four persons took liquor and thereafter deceased Ramanbhai stayed near the hut of Ujiben and all the three witnesses returned from there. Thus, the deposition of any of these three witnesses is not

useful to the prosecution.

PW 7, Ujiben Bhavsing Nayka, examined at Ex.45, happens to be the only eye-witness of the incident and according to the prosecution case, she noticed the accused approaching the deceased on scooter and inflicting injuries upon the body of the deceased with pipe. However, in her deposition, she stated that she did not know deceased Ramanbhai or his brother Dineshbhai. She did not know anything about the incident. She was declared hostile by the prosecution and was confronted with her Police statement but she denied that she had any information as to the incident.

PW 8, Dr.Kishor Pramodray Desai, examined at Ex.47, conducted the post-mortem on the dead body of deceased Ramanbhai on 12th March, 2001. He noticed about eleven external injuries as mentioned in column No.17 of the post-mortem note placed at Ex.48 and corresponding internal injuries. The injuries were ante-mortem. According to this witness, the cause of death was “shock and hemorrhage following multiple

injuries". He produced the PM note at Ex.48. He has not been cross-examined by the defence.

PW 9, Pravinaben alias Pavli Ganpatbhai Thakore, is examined at Ex.50 and she is examined for the purpose that she stated before the Police that she had noticed all the four persons, including the deceased, going towards the hut of Ujiben with liquor, but she did not support the prosecution case even to that extent.

PW 10, Dhanjibhai Mavjibhai, examined at Ex.51, is the Panch witness of Panchnama Ex.52 and 53. Exhibit 52 Panchnama is inquest Panchnama while Ex.53 Panchnama is Panchnama of scene of offence. This witness did not support the prosecution case in any manner and stated that Police had called him and obtained his signature on prepared Panchnamas. PW 11, Pravinbhai Mohanbhai Patel, examined at Ex.55, is also Panch of Panchnama Ex.56 about the arrest of the accused, but the witness did not support the prosecution case and turned hostile. PW 12, Shamalbhai Chatur Solanki, examined at Ex.57, is also

second Panch of Panchnama Ex.56, but he has also not supported the prosecution case. PW 13, Dilipbhai Bhupatsinh Dharia, examined at Ex.58, is Panch of Panchnama Ex.69, by which the investigating agency attached the clothes of the deceased, as presented by ASI of Makarpura Police Station, but the witness did not support the prosecution case. PW 14, Satishbhai Shanabhai Padhiyar, examined at Ex.59, is second Panch of Panchnama Ex.69, and he also has turned hostile. PW 15, Arvindbhai Ramabhai Machi, examined at Ex.62, is also Panch of Panchnama Ex.38, by which it is alleged by the prosecution that the accused discovered Muddamal pipe. This Panch is the second Panch of the said Panchnama but did not support the prosecution case.

PW 16, Vikramsinh Dipsinh Rathod, examined at Ex.64, was the then PI of Makarpura Police Station and on receiving the information, he visited the scene of offence on 11.3.2001 and recorded the statements and complaint of complainant Dineshbhai Melabhai Solanki. The investigation was handed over to him after crime was registered. He drew Panchnama of

scene of offence and thereafter, he entrusted and transferred the investigation to second IO Shaileshbhai Mangalbhai Katara. Shaileshbhai Katara is examined as PW 17 at Ex.68. He investigated the offence further, recorded the statements of witnesses and submitted the chargesheet.

This, in all, is the total sum of the prosecution evidence.

9. From the above evidence, the learned trial Judge came to the conclusion that having appreciated the evidence as a whole of the prosecution case, the only eye-witness of the incident, Ujiben did not depose before the Court that she witnessed the incident. Other witnesses, i.e. three persons who were along with the deceased, according to the prosecution case, left the deceased in alive condition and they did not know anything about the incident. The complainant had no personal knowledge about the incident and as such, according to the learned trial Judge, there was no iota of evidence against the accused to connect him with the crime.

10. This being an Appeal against acquittal, after re-appreciating the evidence and scanning the reasonings of the learned trial Judge, it becomes clear that the view taken by the trial Court is the only view which could be taken from the evidence recorded. In acquittal Appeals, interference is warranted only when it is found that the reasons given by the trial Court for acquittal are palpably wrong, manifestly erroneous, perverse or demonstrably unsustainable. As stated above and as discussed above, there is no evidence at all against the accused to connect him with the crime for the charges levelled against him. The view taken by the trial Court is reasonable, plausible and possible view from the evidence recorded. The judgment and order impugned in the Appeal therefore does not require any interference and hence, the following order.

Appeal stands dismissed.

(J.R.Vora, J.)

(Smt.Abhilasha Kumari, J.)

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